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DEPARTMENT OF STATE

Memorandum of Conversation

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DATE: April 24, 1961

SUBJECT: VALCO Negotiations

PARTICIPANTS:
Abram Chayes, Legal Adviser
Peyton Kerr, Deputy Assistant Secretary for Economic Affairs
George R. Kenney, OFD/ED
Edgar Kaiser, President, Kaiser Industries
George Woods, First Boston Corporation
Lloyd Cutler - Cox, Langford, Stoddard & Cutler
Mr. Rhodes, Kaiser Aluminum
Mr. Murnane, Kaiser Aluminum

COPIES TO:
Ronald Sullivan, Sullivan & Cromwell
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B - 2, L - 3, E - 3, OFD - 1, ED - 6, ICA - 3, Exim - 3
Treasury - 3, AF - 3, AF/W - 3, DLF - 3

Mr. Kaiser asked Mr. Cutler to present the VALCO viewpoint on outstanding issues. Mr. Cutler summarized these as (a) an appropriate trigger figure, (b) the financing of any over-run of construction costs, (c) past take-out arrangements, [redacted]

I. Trigger Figure

The companies believe the U.S. figures of $4.5 million of increased expenses and/or shut-down costs in any one year or $15 million in any consecutive five-year period resulting from an act of the Ghana Government covered by the proposed equity guaranty are too high. The companies will accept these figures, however, if a breach of contract by Ghana increases VALCO's costs by $500,000 per year and such increase permits VALCO to shut down the plant (operation bootstrap) and make a claim for its guaranty when the total increase in expenditures reaches the trigger figure. Otherwise the companies ask the trigger figure be lowered to $2 million in any one year or $7.5 million in any five year period.

Mr. Chayes said we recognize that a high figure provides a ceiling under which Ghana can fly, but we fear the bootstrap option permits too much flexibility. In the latter case, the companies are betting that Ghana won't "cure", but if Ghana does so, then the companies will have interim losses. Since it appears that no single figure would satisfy the Government and the companies, a new formula is proposed putting the bootstrap operation in a separate

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separate category. Where there are no self-inflicted damages, the Government proposes to retain the $4.5 and $15 million figures, but for the bootstrap operation if there are damages of $2 million or more in any one year, VALCO may shut down, and when shut-down costs reach $6 million the companies may make a claim under the guaranty.

Mr. Kaiser summarized the above proposal as meaning that at a point when damages reach $2 million, VALCO can decide whether to wait for damages to reach $4.5 million (that year) or to shut down and wait for damages to reach $6 million. Mr. Chayes agreed with this interpretation.

Mr. Cutler explained the companies' interest in the option to shut down as the principal leverage on Ghana to maintain its own contractual obligations. Mr. Chayes thought the new U.S. proposal provided a low trigger figure in effect, because damages due to a shut-down would rise rapidly, and Mr. Cutler remarked that the $6 million figure could be reached in one year.

Mr. Cutler also had a new proposal. He thought an act of Ghana causing damage of $4.5 million in one year should not have to be suffered one whole year without remedy. Therefore he proposed a rate system. For example, if damages due to an increased power rate should occur at an annual rate of $2 million, VALCO should not have to wait a year to shut down.

Mr. Chayes said the duration of time was significant, because it is necessary to be sure the injury is serious and that VALCO cannot escape it through negotiation. Nevertheless, he agreed to pass on this proposal for consideration. Meanwhile, the companies are to consider the new U.S. offer.

II. Over-run of Construction Costs

Mr. Cutler stressed the unusual nature of VALCO's commitment now to build a plant in 1965 to be completed in 1966-67. Cost estimates are more difficult than in the normal case where a company makes its estimate then starts construction right away. The World Bank, the U.S. and the U.K. are all insisting that VALCO be bound to finish the smelter, therefore the companies think the lenders ought to cover any over-run, but they are willing to share it on the same basis as equity and loan capital are shared, i.e. 1-3

Mr. Chayes pointed out that Mr. Linder feels that all over-run costs should be borne by the equity holders, and added he was not certain how or whether a commitment to cover such a contingency item could be made.

III. Post Take-out Arrangements

Mr. Cutler said the companies, if taken out and paid for their claims within a year, would be willing to manage VALCO, furnish alumina and pay

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VALCO for ingot at the agreed price of 56% until the end of the tolling contracts. The companies would expect to receive a reasonable management fee.

Mr. Woods said there might be conditions under which the Government wouldn't want Kaiser to manage the operation.

It was agreed that a flexible arrangement could be worked out under which the companies would be willing to fulfill the tolling contracts with the U.S. exercising an option re management.

[redacted]

The duration of the guaranty was agreed to on our latest terms.

Mr. Chayes

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Mr. Chayes mentioned that the Secretary has a letter from Gbedemah to be answered and that the World Bank is anxious to invite the Ghanaians to send a negotiating team to Washington. Can we now tell the World Bank that we are sure of getting an agreement?

Mr. Woods thought not until after Mr. Linder has been approached concerning the loan. He withdrew his objections when informed that Mr. Ball and Mr. Dillon had agreed to a loan of $96 million.

Other points brought out during the conversation concerned Mr. Kaiser's desire to amend VALCO's agreement with Ghana to remove the commitment to build a six pot line smelter and to change the equity requirements from $32 million to 25 per cent of the investment. Mr. Kaiser will telegraph these proposals to Nkrumah after clearing with the World Bank.

Mr. Woods expressed an interest in continuing to explore the private market's willingness to provide funds for development projects, and he is looking for a test case.

There was a brief discussion of Nkrumah's congratulatory telegram to Castro which all agreed was unfortunate.

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